



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER
GOVERNOR

December 30, 2008

Certified Mail: 7003 1680 0000 6167 6773

Mr. Robert Shingai
Environmental Health Director
San Benito County Environmental Health Division
1111 San Felipe Road, Suite 101
Hollister, California 95023-2814

Dear Mr. Shingai:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the San Benito County Environmental Health Division Certified Unified Program Agency (CUPA) on November 4 and 5, 2008. The evaluation was comprised of an in-office program review, and field oversight inspections, by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, and program recommendations.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that San Benito County Environmental Health Division's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Jennifer Lorenzo every 90 days after the evaluation date. The first deficiency progress report is due on February 3, 2009.

Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,

[Original signed by Jim Bohon for]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc: Please see next page.

Mr. Robert Shingai
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cc: Sent via email:

Mr. Raymond Stevenson, CUPA Manager
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Ms. Jennifer Lorenzo
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Mr. Sean Farrow
State Water Resources Control Board
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Mr. Mark Pear
Department of Toxic Substances Control
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Mr. Robert Shingai
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cc: Sent via email:

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Enclosure



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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: SAN BENITO COUNTY DIVISION OF ENVIRONMENTAL HEALTH

Evaluation Dates: November 4 and 5, 2008

EVALUATION TEAM

Cal/EPA: Jennifer Lorenzo
DTSC: Mark Pear
OES: Jeffrey Tkach
SWRCB: Sean Farrow

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. Questions or comments can be directed to Jennifer Lorenzo at (916) 327-9560.

	<u>Deficiency</u>	<u>Corrective Action</u>
1	<p>The CUPA is not assessing the entire state surcharges on some of its regulated facilities. For example, the CUPA did not assess the CUPA Oversight component for nine underground storage tank (UST) facilities. In addition, the CUPA did not assess the entire UST surcharges for two UST facilities.</p> <p>CCR, Title 27, Section 15250 (a) [Cal/EPA]</p>	<p>By June 30, 2009, the CUPA will assess and collect all appropriate state surcharges on its regulated facilities. By February 3, 2009, the CUPA will develop an action plan to remedy the situation and implement it. Beginning February 3, 2009, the CUPA will submit a progress report toward correcting this deficiency.</p>
2	<p>The CUPA is not fully tracking and reporting the enforcement actions taken on the Annual Enforcement Summary Report 4. For example, in the last three fiscal years, the CUPA has been under-reporting the number of informal enforcements initiated. However, the CUPA has been tracking the violations information in a separate database.</p> <p>CCR, Title 27, Section 15290 (a)(3) [Cal/EPA]</p>	<p>By September 30, 2009, the CUPA will verify that the violations and enforcement data on the Annual Enforcement Summary Report 4 will be complete and as accurate as possible. By February 3, 2009, the CUPA will develop an action plan to remedy the situation and implement it. Beginning February 3, 2009, the CUPA will submit a progress report toward correcting this deficiency.</p>
3	<p>The CUPA has not performed an annual California Accidental Release Prevention (CalARP) self-audit in compliance with California Code of Regulations title 19.</p> <p>CCR, Title 19, Section 2780.5 [OES]</p>	<p>By February 3, 2009, the CUPA shall perform an annual CalARP performance audit that fulfills the regulatory requirements and submit a copy to Cal/EPA.</p>

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4	<p>The CUPA has not maintained the state mandated inspection frequency for its CalARP facilities within the last three fiscal years.</p> <p>CCR, Title 19, Section 2775.3 [OES]</p>	<p>By February 3, 2009, the CUPA will develop and submit an action plan which will outline how the CUPA expects to reach the state mandated inspection frequency for the CalARP facilities.</p>
5	<p>The monitoring requirements are incomplete on the underground storage tank (UST) operating permit. The file review indicates that monitoring requirements for tank and pipe systems are not being completely filled out or are left blank altogether.</p> <p>CCR, Title 23, Section 2712 (c) [SWRCB]</p>	<p>By May 4, 2009, the CUPA will verify that all issued operating permits are complete.</p> <p>On the first progress report, please submit a revised operating permit.</p> <p>The CUPA may either completely fill out the monitoring requirements already listed on the current permit or as a condition of the permit, attach a completed and approved monitoring plan (Unified Program Consolidated Form [UPCF] UST-D) to the permit.</p>
6	<p>The CUPA did not inspect its one tiered permitting (TP) facility within its triennial inspection cycle.</p> <p>HSC, Chapter 6.5, Section 25201.4 (b)(2)[DTSC]</p>	<p>The CUPA will ensure that all TP facilities are inspected by June 30, 2009. The CUPA will indicate when the goal has been achieved in the next FY 08/09 Annual Inspection Summary Report 3.</p>
7	<p>The CUPA is unable to document in certain instances that some facilities that have received a notice to comply for minor violations have returned to compliance (RTC) within an established timeframe. Either the CUPA must provide the business with a self-certification form per its Inspection and Enforcement (I&E) Program Plan and verify that the return to compliance certification has been received in order to document compliance or, in the absence of compliance certification, the CUPA must use a follow-up process to confirm that compliance has been achieved. For example, no RTC Certifications or follow-up documentation could be found in the files for the following:</p> <ol style="list-style-type: none"> 1) 07/12/2005 inspection conducted at Benson Automotive located at 1725 San Felipe Road in Hollister, CA. 2) 08/27/2007 inspection conducted at Mark Nicholson Inc. located at 701 McCray Street in Hollister, CA. 3) 08/27/2007 inspection conducted at Gary Barnes Trucking located at 690 Helen Drive in Hollister, CA. 4) 06/09/2006 inspection conducted at E-Z Transmissions located at 249 San Benito Street in Hollister, CA. 	<p>The CUPA will follow its I&E Program Plan. By June 30, 2009, please send an example of an RTC or a complete follow-up report for a hazardous waste generator.</p>

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	<p>5) 06/27/2006 inspection conducted at San Benito Auto Wreckers located at 2120 San Juan Road in Hollister, CA.</p> <p>CCR, Title 27, Section 15200 HSC, Chapter 6.5, Section 25187.8 [DTSC]</p>	
8	<p>The CUPA did not implement its graduated series of enforcement. The Annual Summary Report for fiscal year (FY) 2007/2008 indicates one facility with Class I violations, which was referred to the District Attorney (DA).</p> <p>During the February 12, 2008, inspection of an auto service shop, the CUPA cited the facility for the following violations:</p> <ul style="list-style-type: none"> • failure to obtain a permit from the San Benito County CUPA for the 2006, 2007, and 2008 operating years, • failure to manifest hazardous wastes for disposal within the legal accumulation time (180 days), • failure to label hazardous wastes properly as to content and date of accumulation, • failure to maintain inspection logs for weekly inspections of hazardous waste areas, • failure to maintain training records, • failure to have a map showing the storage location of all hazardous materials and hazardous wastes on site, and • failure to provide secondary containment for drums of antifreeze. <p>After the DA declined the case, the CUPA did not follow its graduated series of enforcement.</p> <p>DTSC Enforcement Response Policy (EO-02-003-PP); CCR, Title 22, Section 66260.10 and Title 27, Section 15200; and HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6 [DTSC]</p>	<p>The CUPA will follow its I&E Program Plan. For cases referred to the DA or the State Circuit Prosecutor and which will not be pursued by either office, the CUPA will follow its graduated series of enforcement, which includes the issuance of administrative enforcement orders.</p> <p>By February 3, 2009, the CUPA will attend enforcement training, such as the CUPA conference.</p>

CUPA Representative

Raymond W. Stevenson

(Print Name)

Original signed

(Signature)

Evaluation Team Leader

Jennifer L. Lorenzo

(Print Name)

Original signed

(Signature)

PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations provided in this section address activities that are not specifically required of the CUPA by statute or regulation. The recommendations, if any, are provided for continuous improvement and it is the CUPA's decision whether or not to follow the recommendations.

1. **Observation:** The CUPA's Self-Audit reports contain all the required elements; however, the CUPA does not provide details on its permitting and enforcement activities. For example, for permitting activities, the CUPA states on its Self-Audit reports that the CUPA has issued tiered permits to its TP facilities. The CUPA also issues Unified Program Facility Permits to all its regulated facilities and an operating permit for its UST facilities. For enforcement activities, the CUPA stated on its FY 07/08 Self-Audit report that formal enforcement was initiated against three businesses.

Recommendation: Cal/EPA recommends that the CUPA compose narrative summaries on its permitting and (informal and formal) enforcement activities on future Self-Audit reports.

2. **Observation:** The CUPA's aboveground storage tank (AST) information in its policy and procedures (Standard Operating Procedures [SOPs]), including the Inspection and Enforcement (I&E) Program Plan and Self-Audit report are outdated.

Recommendation: Cal/EPA recommends that the CUPA update its AST information based on the new Aboveground Petroleum Storage Act requirements.

3. **Observation:** The CUPA regularly attends the Environmental Crimes Task Force held within the County of Monterey. The CUPA also regularly attends the annual Cal-CUPA conference for training.

Recommendation: Cal/EPA recommends that the CUPA continue to attend the task force meetings and annual CUPA conferences. The CUPA is encouraged to invite its DA to attend the task force meetings held in Monterey County.

4. **Observation:** With the new DA in office, the CUPA has been given approval recently to seek enforcement through the California Environmental Circuit Prosecutor Program. The CUPA has referred one case to the state circuit prosecutor in August 2008.

Recommendation: Cal/EPA encourages the CUPA to continue to utilize and seek enforcement through the state circuit prosecutor program in the event that its County DA does not accept its enforcement cases.

5. **Observation:** San Benito County formerly contracted with the State Department of Public Health, Local Public Health Services Section (LPHSS), for environmental health services. The County's contract with the state ended on June 30, 2007. The San Benito County Division of Environmental Health has only been able to dedicate an approximate 0.28 full-time equivalent (FTE) for an inspector to the Unified Program. Recently, however, the County hired an additional staff, specifically for the food program and, thereby, enabling the current CUPA inspector to dedicate more time into the Unified Program. The current CUPA inspector hopes that the new staff will eventually become involved in the Unified Program.

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Recommendation: To ensure the continuity and sustainability of the CUPA program within the County of San Benito due to an unsuspected, unforeseen, abrupt vacancy of the only remaining CUPA inspector's position, or to maintain the basic functions of the CUPA program due to any extended absence of the CUPA staff, Cal/EPA recommends that the County of San Benito recruit or devote additional resources to the CUPA program. If unable to recruit additional resources, Cal/EPA recommends that the new staff be cross-trained in the Unified Program and, therefore, also be able to administer, implement, and enforce the CUPA program.

6. **Observation:** During the file review, OES observed that many of the files contained old forms for the business plans (Form 2730, 2731).

Recommendation: OES recommends that the CUPA circulate the new forms (UPCFs) to local businesses when the businesses update their business plans.

7. **Observation:** During the file review, OES observed that several files had maps that lacked sufficient detail.

Recommendation: OES recommends that the maps be more detailed, such as identifying the entrance, exits, and road names.

8. **Observation:** The CUPA has a procedure to prevent the public from viewing confidential material during a public request for information; however, the paperwork is all incorporated within the packet files.

Recommendation: OES recommends placing all confidential information in separate folders, segregated within the business plan packets to facilitate easier and efficient protection of trade secrets or confidential information.

9. **Observation:** During the file review, OES observed that a few files were missing components of the business plan; four files were missing the Emergency Response Plan; one was missing a Site Map, three were missing Contact Information, and two were missing an Employee Training Procedure.

Recommendation: OES recommends that the CUPA develop and implement a checklist for file review as business plans are received and/or updated to help ensure complete business plan packets are maintained.

10. **Observation:** The CUPA has a File Review Checklist and Log Sheet in each facility file, but it is not clear if the form is currently being used.

Recommendation: SWRCB recommends that the CUPA utilize its File Review Checklist and Log Sheet for consistency and completeness.

11. **Observation:** The CUPA does not have an installation/plan check checklist to ensure that proposed installations meet all of the required criteria.

Recommendation: The SWRCB recommends that the CUPA develop an installation/plan check checklist to make the review and installation process easier for both the UST facility owner and the CUPA staff member.

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12. Observation: The CUPA has improved the frequency of its hazardous waste generator inspections. The CUPA has inspected 91 hazardous waste generators that have been identified by the CUPA. The last three annual inspection summary reports indicate the following:

- 1) 82 hazardous waste generators were identified in FY 05/06 of which 42 were inspected,
- 2) 92 hazardous waste generators were identified in FY 06/07 of which 8 were inspected, and
- 3) 99 hazardous waste generators were identified in FY 07/08 of which 41 were inspected.

The CUPA has inspected 92 percent of all of its known facilities generating hazardous waste over the past three fiscal years.

Recommendation: DTSC recommends that the CUPA continue with the established inspection completion rate within the hazardous waste generator program.

13. Observation: The CUPA's Hazardous Waste Generator Inspection Checklists do not distinguish among Class I, Class II, and minor violations.

Recommendation: DTSC recommends that the CUPA modify its inspection report to classify these violations in order to distinguish between enforcement modes for Class I, Class II and minor violations.

14. Observation: Since the last evaluation in May 2006, the CUPA has made considerable progress in both its inspections and enforcements. In addition to administering, implementing, and enforcing the Unified Program, the CUPA also provides other environmental health services for the County of San Benito, such as food protection, vector control, water well and water system oversight, sewage disposal, solid waste, land use and planning, swimming pool and spas, and housing complaints. Also, since the CUPA's agreement with its participating agency (City of Hollister) dissolved in 2006, the CUPA has achieved the inspection frequencies for its UST and hazardous waste generator programs in FY 07/08. The CUPA has also gradually increased its inspections of the business plan facilities within the last three fiscal years.

In FY 05/06, the CUPA referred two facilities to its DA for violations under the business plan program. In FY 07/08, the CUPA referred to its DA two businesses for violations under the business plan program, one facility for violations under the UST program, and one business for violations under the hazardous waste generator program. In August 2008, the CUPA referred one business for violations under the UST program to the California Environmental Circuit Prosecutor; this UST facility has been issued a red tag since July 2007.

Recommendation: Cal/EPA recommends the CUPA to continue the good work.